IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Crl.MC.No. 2419 of 2007()

CC.68/2006 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOTTAYAM

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PETITIONER:

LALU VARGHESE, AGED 47 YEARS,
S/O.VARGHESE, VELLADAMCHIRAYIL,
VALEEVETTIPURAM (WARD 3), KOZHENCHERRY,
PATHANAMTHITTA.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. T.K.SOMAN, AGED 52 YEARS,
THADATHUMPARAMBIL HOUSE, KOONAMPALLIKARA,
PANACHIKADU VILLAGE, KOTTAYAM.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2419 of 2007

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Dated this the 31st day of July, 2007

O R D E R

The petitioner is the first accused in a prosecution under Section 420 I.P.C. Cognizance has been taken on the basis of a private complaint filed by the second respondent herein. The crux of the allegations is that accused 1 and 2, in furtherance of their common intention, had fraudulently induced the petitioner to part with amounts. On the promise that a job shall be provided for the son of the second respondent, accused 1 and 2 induced the second respondent to part with an amount of Rs. 2.5 lakhs. It is the second respondent who allegedly contacted the complainant initially. He allegedly took the defacto complainant to the petitioner. He received the amount and allegedly issued an acknowledgment without making any reference to the purpose for which the amount was received. Towards his own need the amount was received is the statement in the acknowledgment given by the petitioner. Later, a cheque for Rs.2.5 lakhs was issued by the petitioner to the defacto complainant and on that a prosecution under Section 138 of the N.I. Act is pending.

2. The petitioner wants the complaint to be quashed invoking the powers under Section 482 Cr.P.C. What is the reason? The short contention raised by the petitioner is that the transaction between the petitioner and the complainant was one of pure money lending and borrowal. The complainant had paid the amount and the petitioner, in turn, had issued acknowledgment in the form of a promissory note as also a cheque for repayment.

3. At this early stage of the proceedings, I shall carefully avoid any detailed discussion on the acceptability of the rival contentions. Suffice it to say that I am not at all persuaded to agree that the contention raised that the transaction must be reckoned purely as a transaction of money lending between the complainant and the petitioner and the proceedings quashed on the basis of such an assumption. The prayer for quashing the proceedings cannot, in these circumstances, succeed.

4. The learned counsel for the petitioner then submits that a warrant of arrest is issued by the learned Magistrate against the petitioner. The petitioner is absolutely innocent. His failure/omission to appear earlier was not wilful, but was due to reasons beyond his control. He is willing to surrender before the learned Magistrate and seek bail. But he apprehends

that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued to the learned Magistrate to release the petitioner on bail on the date of surrender itself.

5. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in

charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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